

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ASA TYRELL HAMILTON,

Petitioner,

v.

CASE NO. 5:11-cv-14957

HONORABLE JOHN CORBETT O'MEARA

UNITED STATES OF AMERICA,

Respondent.

_____ /

OPINION AND ORDER
DISMISSING THE HABEAS CORPUS PETITION
AND DENYING THE PENDING MOTIONS AS MOOT

Petitioner Asa Tyrell Hamilton has filed a habeas corpus petition under 28 U.S.C. § 2241(a). Also pending before the Court are Petitioner's "Motion for Leave to File Respondent's Proposed Answer to Writ of Habeas Corpus" and his "Motion for Writ of Habeas Corpus, or in the Alternative, Demurrer to Indictment, or Federal Rule of Criminal Procedure 12(b)(3)(B)."

Petitioner is confined at the Wayne County Jail in Detroit, Michigan. He alleges that he has been indicted by a federal grand jury on drug and firearm offenses and is awaiting trial before United States District Judge Victoria A. Roberts. Petitioner asserts that he is in custody in violation of the Constitution or laws or treaties of the United States, and he seeks to have the indictment against him dismissed with prejudice.

The Court may grant the writ of habeas corpus if the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner, however, is the defendant in a criminal case currently pending

before another judge in this District. See *United States v. Hamilton*, No. 2:10-cr-20749-1 (E.D. Mich. Dec. 14, 2010). He is not entitled to habeas corpus relief because all his claims relate to the pending criminal charges and can be raised in his criminal case. *Garey v. Fed. Det. Ctr., Miami*, 180 F. App'x 118, 121 (11th Cir. 2006). Furthermore, if he is convicted, he may appeal his conviction or move to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. "Typically, a federal prisoner may file a § 2241 petition contesting the legality of his detention only if his claim is such that he cannot obtain effective relief on direct appeal or through a § 2255 motion." *Garcia-Echaverria v. United States*, 376 F.3d 507, 510 (6th Cir. 2004).

Accordingly, the petition for writ of habeas corpus [dkt. #1] is **DISMISSED** without prejudice. The pending motions [dkt #2 and #3] are **DENIED** as moot.

s/John Corbett O'Meara
United States District Judge

Date: December 9, 2011

I hereby certify that a copy of the foregoing document was served upon Petitioner on this date, December 9, 2011, using first-class U.S. mail.

s/William Barkholz
Case Manager